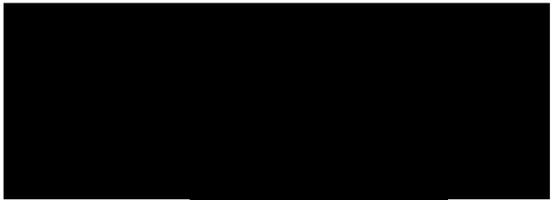


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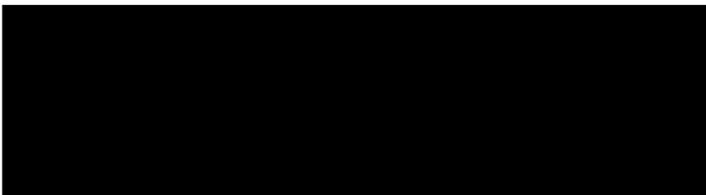
Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen spouse.

The petitioner, through counsel, timely appealed.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social

workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The petitioner in this case is a native and citizen of Haiti who entered the United States on November 28, 2003 as a B-2 nonimmigrant visitor. The petitioner married M-J-C-,\* a U.S. citizen, in Skokie, Illinois on December 8, 2003. The petitioner filed the instant Form I-360 on July 22, 2005.<sup>1</sup> As it relates to his claim of abuse, with his initial filing, the petitioner submitted a personal statement and a letter from the Reverend of his church. In his statement, the petitioner indicated that during their marriage, his spouse appeared to have a continuing romantic relationship with her ex-boyfriend. The petitioner claimed that in February 2004, his spouse went on a 12-day vacation and when she returned she "completely broke off her relationship" with the petitioner and changed the locks on the house. The petitioner described a single instance where his spouse referred to his immigration status and generally discussed being "insulted" by his spouse. The letter from [REDACTED] indicates that upon the petitioner's request, he contacted the petitioner's spouse to encourage her to seek counseling but that his spouse was not interested in continuing her relationship with the petitioner and had already moved in with another man.

On December 19, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, further evidence that the petitioner had been battered by or subjected to extreme cruelty by his spouse. The petitioner responded to the RFE on February 17, 2006. As it relates to his claim of abuse, the petitioner submitted a psychological assessment and a letter from [REDACTED] and [REDACTED] a couple from the petitioner's church. The psychological assessment, prepared by [REDACTED] after two sessions on January 10<sup>th</sup> and 11<sup>th</sup> 2006, similarly describes the claims made by the petitioner in his statement regarding his wife's relationship with her ex-boyfriend. However, the assessment also makes additional claims that were not made by the petitioner in his initial statement. For instance, the assessment indicates that the petitioner was abused economically by his spouse as the petitioner was forced to give his spouse his paycheck and to live on only \$50 from each paycheck. The assessment also claims that the petitioner's spouse would continuously "demean and threaten" the petitioner, was "verbally aggressive and insulting," and isolated him from his friends. Finally, the assessment indicates that although his spouse attending a counseling session with the petitioner's pastor, she was "furious" that the petitioner discussed their problems with the pastor. The assessment concludes by stating that the petitioner:

. . . [S]eemed to have experienced forms of psychological abuse at the hands of his wife in her effort to maintain control over him. His wife was verbally abusive and continuously

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\* Name withheld to protect individual's identity.

<sup>1</sup> Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by his citizen spouse on February 9, 2004. The petition was approved on January 13, 2005. A second Form I-130 was denied as "superfluous" given the approval of the initial Form I-130.

berated, humiliated and insulted him. Even though his wife did not restrict his movements, he felt all alone since his wife resented and would verbally punished [sic] him when he made any attempts to reach out to those around him. While he did not suffer any physical harm, the continuous threats, insults, puts down and humiliations was debilitating.

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In addition to the emotional abuse, [the petitioner] also suffered economic abuse. [His spouse] maintained control of all their monies and did not let him have any access to the family income. She also made all household decision without his input or without consulting him.

The letter from the [redacted] indicates that the petitioner told them of his "marriage situation at home" and that they offered him spiritual and moral assistance. However, the [redacted] do not specifically describe what the "marriage situation" was or provide any details to support the petitioner's claim of abuse.

On May 16, 2006, the director issued a Notice of Intent to Deny (NOID) notifying the petitioner that he had failed to establish his claim of abuse. In the NOID, the director noted that the claims contained in the psychological assessment varied from the claims made by the petitioner in his initial statement. Because of the discrepancies in the testimonial evidence, the director indicated that any claims based solely upon those made by the petitioner would not be sufficient to establish the petitioner's eligibility.

The petitioner, through counsel, responded to the director's NOID on June 16, 2006. In response to the NOID, counsel argued, in part, that there were, in fact, no discrepancies between the petitioner's statement and those made in his psychological evaluation, but rather that the assessment "supplements" the petitioner's statement. In addition, counsel submitted a May 30, 2006 letter from [redacted] providing several reasons for why "it is likely that [her] assessment would be different" from the petitioner's letter and letters from acquaintances of the petitioner.

After reviewing the evidence contained in the record, including the evidence submitted in response to the RFE and the NOID, the director denied the petition finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner, through counsel, filed a timely appeal and proffers the same arguments that were made in response to the director's NOID. In addition, counsel submits an additional letter from [redacted]. As will be discussed, we are not persuaded by the arguments or evidence submitted on appeal and find that the petitioner has failed to overcome the findings of the director.

On appeal, counsel reasserts that the psychological assessment merely supplements the petitioner's statements rather than contradicting them. Counsel further explains that because the evaluation was performed in the petitioner's native language, he could "express himself more fully than he can in French or English. Counsel also submits a statement from [redacted] referring to the "non-judgmental atmosphere" which allowed the petitioner to "freely talk about his life experiences." In the letter submitted on appeal, [redacted] additionally attributes the petitioner's failure to describe all the claims in his initial statement to the fact that he is a man and that he comes from a "culture that supports and encourages machismo."

We are not persuaded by [redacted] statements or counsel's arguments. While counsel, in part, attributes the

additional claims contained in the assessment to the petitioner's use of his native Creole, the record does not contain any statement from the petitioner indicating that he was not able to fully state his claim in his initial statement which was written in French. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Further, although [REDACTED] refers to "research" she fails to present any documentation to support the contention that "men are more likely to under report their abuse and minimize the impact that it has" and to present any evidence regarding the differences in "societal norms" and culture that prevented the petitioner from adequately addressing his claims in his personal statement. The petitioner himself has failed to submit an explanatory statement indicating why he failed to state all of his claims in the statement he submitted at the time of filing.

We also do not agree with counsel's characterization of the petitioner's statement as containing the same allegations as those made in the assessment. Specifically, counsel's reference to the petitioner's claim of financial control and continuous threats regarding his immigration status in his personal statement is inaccurate. While we acknowledge that the petitioner's statement indicated that his spouse "made decisions without his input," the petitioner makes no claim of his spouse's financial control as alleged by counsel. Similarly, while the petitioner described a single incident in which his spouse referred to his immigration status, this description hardly compares to the contention in the assessment that he was continuously threatened because of his immigration status. In his statement, the petitioner generally described being asked by his spouse, "Where are you from?" and "Who are you?," but does not describe how often his spouse would ask these questions of him or discuss any specific instance in which he was asked these questions. While the petitioner also describes a single instance in which he was "insulted" by his spouse after he saw her being inappropriately touched by her ex-spouse at a graduation ceremony, he does not indicate what form the insult took or any other information which would indicate that the insult could be construed as an example of his spouse's extreme cruelty.

It is noted that that while the assessment acknowledges that the petitioner's spouse often complained that the petitioner himself was "controlling and trying to force her to be somebody she was not," [REDACTED] does not pursue this claim or discuss it any further.

Counsel also argues that the director erred in finding that there were discrepancies in the claims made regarding the petitioner's attempt at receiving marriage counseling. Counsel explain:

[The petitioner] and his ex-wife attended two different churches and [the petitioner] sought counseling with two different pastors. [REDACTED] from the New Hope Haitian Community Church, attempted to help the couple by providing counseling, but he was rejected by [the petitioner's] ex- wife, as indicated in his letter and [the petitioner's] statement. [The petitioner's] ex-wife also went to the Haitian Church of God, as stated in the letter written by [REDACTED] and [REDACTED]

However, like counsel's previous argument, this argument is also unsupported by any documentary evidence or explanatory statement from the petitioner himself. Regardless, we are also not persuaded by counsel's explanation. In his statement, the petitioner indicated that he contacted his pastor "to let him know what was happening." The petitioner then claimed that the pastor attempted to call the petitioner's spouse on the telephone but that "she did not answer." The letter submitted from [REDACTED] indicates that he called the

petitioner's spouse but that it "didn't work out because she told me it's not worth it" and had already moved in with another man. The psychological assessment said that the petitioner and his spouse actually attended a counseling session but that the petitioner's spouse was "furious" at the petitioner for discussing their problems with the pastor. Counsel's attempts to ascribe the inconsistencies noted by the director to an erroneous assumption on the part of the director are not persuasive. First, counsel fails to provide any explanation for the discrepancy between his statement regarding [REDACTED]'s lack of contact with his spouse and [REDACTED]'s claim that he actually spoke with the petitioner's spouse. Second, while counsel claims that the petitioner actually contacted to different pastors, the record does not contain any explanatory statement from the petitioner describing his attempt at counseling with a pastor from the Haitian Church of God. While the letter from the [REDACTED] does indicate that the petitioner and his spouse were members of a different church than that of [REDACTED], their letter offers no testimonial evidence regarding the petitioner's attempts at marital counseling. As previously noted, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *Id.*

Counsel further argues that the director's failure to consider testimony which was based solely on the petitioner's claims is not supported by the regulations. Counsel states that in cases where the beneficiary is unable to provide primary evidence of the abuse, he may provide any credible evidence relevant to the petition and asserts that the psychological evaluation "should be seen as primary evidence." We are not persuaded by counsel's arguments and find counsel's assertion that the psychological assessment should be considered as primary evidence to be equally unpersuasive. As [REDACTED] was not a witness to any of the events or incidents relayed to her by the petitioner, her summary is not based upon her first hand knowledge of events, but rather upon her interpretation of the petitioner's experience as related to her by the petitioner. Accordingly, it cannot be considered as primary evidence. While counsel correctly observes that the director must consider "any *credible* evidence," because of the inconsistencies noted between the petitioner's statements, the assessment, and the testimonial evidence submitted in the petitioner's behalf, the director's finding that documentation based solely upon the petitioner's claims "will not be considered sufficient" to establish his claims is not erroneous. It is noted that pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible *and the weight to be given that evidence* shall be within the sole discretion of the Service.

Even if we were persuaded by counsel's arguments and found the testimonial evidence contained in the record to be consistent, we do not find the evidence sufficient to establish a claim of battery or extreme cruelty. It is first noted that the petitioner has made no claim of being threatened with or actually subjected to physical abuse by his spouse. The petitioner's assertion of extreme cruelty is based upon the claim that his spouse had a relationship with another man, and the general contention that he was "insulted," "humiliated," and threatened with his immigration status. As previously discussed, the petitioner's statement describes only a single instance in which he claims that he was "insulted" and told that if did not "stay calm . . . [he] would never be able to gain legal residency here." Without a description of any specific incident, the general claims regarding threats and insults do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The petitioner's spouse's actions, while undoubtedly hurtful to the petitioner, do not appear to have been part of an overall pattern of violence against the petitioner. In enacting the statute, Congress intended to protect aliens from the extreme concept of domestic violence, not just mere unkindness. Accordingly, not every insult or unhealthy interaction between spouses will be found to rise to the level of domestic violence.

The affidavits submitted by the petitioner's acquaintances provide no further evidence related to a claim of

extreme cruelty. For instance, while the [REDACTED] indicate that the petitioner told them of the “fact, the sufferings, and the words, etc.,” they do not offer any details which would support a finding of extreme cruelty. Similarly, the letter from [REDACTED] indicates only that the petitioner was “abused emotionally and he had lost his pride because his wife treated him like a little boy . . . .” While [REDACTED] describes the incident where the petitioner “was forced to seat [sic] with his [spouse’s] ex-husband and boyfriend,” he does not provide any examples of emotional or verbal abuse perpetrated against the petitioner by his spouse.

As it relates to the claim of “financial control” that is contained in the assessment, the assessment indicates that the petitioner gave his spouse his pay checks and received only \$50 from every paycheck to “take care of his transportation or whatever needs he might have.” However, the claim of financial control is diminished by the petitioner’s submission of a bank statement which indicates that, during his marriage, he was the sole account holder of a savings account with Northview Bank and Trust. The bank statement submitted by the petitioner, covering the period from December 2004 to March 2005 indicates an average balance of \$380 and deposits ranging from \$87 to \$882. The record contains no explanation for the discrepancy between the petitioner’s ownership of this personal savings account and the claim that he was “in a state of complete financial dependence” because his spouse controlled all of the finances and forced the petitioner to turn over his entire paycheck leaving him with only \$50 for his expenses.

As discussed above, we concur with the determination of the director that the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has failed to overcome this finding on appeal.

Beyond the decision of the director, we also find that the petitioner failed to establish that he resided with his spouse. On the Form I-360, the petitioner indicated that he resided with his spouse from November 2003 until April 2005 and that they last resided together at [REDACTED]. However, while the petitioner submitted documentary evidence such as his driver’s license, a bank statement, letters and envelopes addressed to the petitioner at the above stated address, the record does not contain any documentary evidence, such as utility bills, a lease, lease receipts, mortgage statements, or correspondence which demonstrates the petitioner’s spouse’s residence at that address. We do not find the immigration documents addressed to the petitioner’s spouse at the above address to be persuasive evidence of their joint residence. Further, while we note the existence of an automobile insurance policy that lists both the petitioner and his spouse, the policy is addressed to the petitioner only and specifically excludes the petitioner’s spouse as a covered driver.

While the absence of documentary evidence is not necessarily disqualifying, the petitioner fails to provide any probative testimonial evidence regarding his residence with his spouse. For instance, the petitioner does not discuss whether they lived in only one home during their marriage, whether their home was rented or owned, or any other details about the residence itself. Further, the petitioner failed to describe their general daily or weekly schedules and routines at the residence, any of his spouse’s or the former couple’s jointly owned belongings and shared activities at the home. The affidavits submitted on the petitioner’s behalf also fail to describe their residence and to indicate that they ever visited the petitioner and his spouse at their home. Accordingly, the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.